A

WB FRESH COCONUT SUPPLIER SDN BHD

v.

GAN BOON WAH & ANOR

B

HIGH COURT MALAYA, JOHOR BAHRU
TEO SAY ENG J
[CIVIL SUIT NO: 23NCVC-142-10-2012]
12 MARCH 2013

C ***TRADE MARKS:*** *Infringement of - Likelihood of deception and confusion - Whether alleged infringing trade mark identical or similar to plaintiffs' trade mark - Imperfect recollection test - Application of - Whether consumer would be deceived - Whether interlocutory injunction should be granted*

D This was an *ex parte* application by the plaintiff in encl. 4 for various interlocutory injunctions pending trial. The plaintiff was one of the leading suppliers and distributors of fresh Thai coconut beverages in Malaysia. The plaintiff's Thai coconut beverages were sold under the "WB Fresh Coconut Thailand" brand and the term E "WB" formed part of the plaintiff's company name. The plaintiff was the registered proprietor of the mark which was also registered in Singapore. The plaintiff therefore had the exclusive right for the use of the mark and all coconut beverages were sold with the plaintiff's distinctive label. The first defendant was the F former sales commission agent and manager of the plaintiff. The first defendant was subsequently employed by BW Thai Coconut Enterprise, a sole proprietorship, registered and owned by the second defendant. The plaintiff claimed that the marks used by the defendants on their products were identical and resembled the G registered trade mark of the plaintiff and therefore would likely deceive or cause confusion in the course of the trade in relation to the products of which the plaintiffs trade mark was registered. The plaintiff also alleged that the defendants had been passing off the defendants goods as that of the plaintiff's. However, the H defendants contended that the plaintiff's could not complain about the defendants name "BW Thai Coconut Enterprise" as the words did not belong exclusively to the plaintiff. Further, the fact that the Companies Commission of Malaysia had allowed the registration of the second defendant's sole proprietorship indicated I that there was nothing identical, similar or likely to deceive or cause confusion. The defendants further submitted that

interlocutory injunctions should not be granted as the plaintiff had failed to make full and frank disclosure and suppressed material facts which had misled the court into believing that the marks were similar.

Held (allowing plaintiff's application in encl. 4 with costs in cause):

(1) When one looked at the two trademarks side by side, there were various noticeable and notable differences. However, what the court was concerned with was not the notable differences between the two trademarks when they are put side by side, but whether the basic features, of the two trademarks, namely the shape of the label would confuse members of the public. When the two trade marks were compared carefully, the similar shape of the two trade marks with the pictorial device of the coconut and the letters "BW" or "WB" in red at the centre with the same yellow backdrop and the upwardly curved blue coloured text which was "BW Thai Coconut" and "Fresh Coconut Thailand" at the top of the label would probably confuse a consumer in general. (paras 49 & 50)

(2) Applying the imperfect recollection test established in *Sandown Ltd's Application*, a person who saw the defendants trade mark in the absence of the plaintiff's registered trade mark of which he had general recollection would probably be deceived and think that the defendants' trade mark before him was the same as the plaintiff's registered trade mark. (para 51)

(3) The defendants, by passing off their goods with the trade mark of the plaintiff's goods, had caused misrepresentation to the consumers and the plaintiff was likely to suffer damage by reason of such action. The balance of convenience was in favour of the plaintiff, that, if the injunction was not granted the plaintiff would suffer greater injustice. (paras 53 & 54)

Case(s) referred to:

Seet Chuan Seng & Anor v. Tee Yih Jia Food Manufacturing Pte Ltd [1994] 3 CLJ 7 SC ***(refd)***

Jothi Impex Sdn Bhd & Anor v. Yashree Store Sdn Bhd [2009] 9 CLJ 785 HC ***(refd)***

Kuang Pei San Food Products Public Company Ltd v. Wees Marketing Co Sdn Bhd [2012] 2 CLJ 906 HC ***(refd)***

Papparoti (M) Sdn Bhd v. Roti-Roti International Sdn Bhd & Ors [2009] 1 LNS 683 HC ***(refd)***

A *Sandown Ltd's Application [1914] 31 RPC 196* ***(foll)***
Sinma Medical Products (M) Sdn Bhd v. Yomeishu Seizo Co Ltd & Ors [2004] 3 CLJ 815 CA ***(refd)***
Wembley Gypsum Products Sdn Bhd v. MST Industrial Systems Sdn Bhd [2007] 6 CLJ 228 CA ***(refd)***

B **Legislation referred to:**
Rules of Court 2012, O. 29 r. 1

For the plaintiff - Harmeet Singh (Chan Mun Fei with him); M/s Raja Eleena Siew Ang & Assocs
C *For the defendants - Indran Kumaraguru; M/s Krishna Dallumah, Manian & Indran*

Reported by Sandra Gabriel

JUDGMENT

D

Teo Say Eng J:

[1] This is an *ex parte* application by the plaintiff in encl. 4 for various interlocutory injunctions pending the trial of this action
E which was heard *inter parte* in pursuant to O. 29 r. 1 of the Rules of Court 2012 and or the inherent jurisdiction of the court.

[2] The following cause papers are filed in respect of this application:

F (i) The notice of application – L4

(ii) Affidavit in support of the application – L5

(iii) Affidavit in reply by the defendant – L6

G (iv) Affidavit in reply by the plaintiff – L7

(v) Written submission by the defendant – L8

Background Facts

H *The Parties*

The Plaintiff

[3] The plaintiff WB Fresh Coconut Supplier Sdn Bhd is a
I private limited company incorporated under the Companies Act 1965 with its registered address at 49A, Jalan USJ 10/1F, Taipan Triangle, 47620 UEP Subang Jaya, Selangor Darul Ehsan and a business address at 229, Jalan 2A, Kampung Baru Subang, 40000 Shah Alam, Selangor.

The First Defendant

[4] The first defendant is a Malaysian citizen with a last known address at No. 8, Jalan Melor 1, Taman Gemas Baru, 85000 Gemas Baru, Johor and/or No. 19, Jalan Ros Merah 3/10 Taman Johor Jaya, 81100 Johor Bahru.

[5] He was employed as a sales commission agent of the plaintiff on or about 1 November 2004, and was employed as a manager (southern area) of the plaintiff on or about 1 November 2008. He resigned on or about 29 June 2012 and left the employment of the plaintiff on or about 31 July 2012.

[6] At all material times after leaving the employment of the plaintiff, he was employed by, and was the directing mind and will of, BW Thai Coconut Enterprise (Business Registration No: NS 0100288-M), a sole proprietorship registered and owned by the second defendant.

Second Defendant

[7] The second defendant is a Malaysian citizen with a last known address at No. 49, Taman Bukit Emas, Jalan Tampin, 70450 Seremban, Negeri Sembilan and/or No. 19, Jalan Ros Merah 3/10 Taman Johor Jaya, 81100 Johor Bahru.

[8] He is and was at all material times trading under the name and style of BW Thai Coconut Enterprise (Business Registration No: NS 0100288-M) ("BW THAI COCONUT"), a sole proprietorship which was registered on 26 June 2012.

The Plaintiffs Business

[9] The plaintiff was incorporated on or about 28 July 2003 and is in the business of the manufacture, import, export, wholesale and/or retail of fresh coconut and bottled beverages.

[10] The plaintiff is well-established in the promoting, marketing, supplying, distributing and selling of fresh Thai coconut beverages ("fresh Thai coconut beverages"). It is one of the leading suppliers and distributors of fresh Thai coconut beverages in Malaysia, and has an extensive network of distributors and sales agents that distribute and sell its fresh Thai coconut beverages throughout Semenanjung Malaysia.

[11] The plaintiff's fresh Thai coconut beverages are sold under the "WB Fresh Coconut Thailand" brand, whereby the term "WB" also forms part of the plaintiff's company name.

[12] The plaintiff's fresh Thai coconut beverages are very popular and enjoy a very high demand of customers in Malaysia. It supplies, distributes and sells its fresh Thai coconut beverages to retail stores, wholesale outlets and food and beverage outlets throughout Semenanjung Malaysia including but not limited to hotels, hawker centres and restaurants throughout Semenanjung Malaysia.

[13] The plaintiff also owns and operates a website at www.wbfc.com.my, which is accessible to all customers who have access to the internet including customers and/or potential customers in Malaysia.

The Plaintiff's Registered Trademark

[14] The plaintiff is the registered proprietor of the mark ("the plaintiff's mark") registered in Malaysia with the Intellectual Property Corporation of Malaysia ("MyIPO") for "SUPPLIER OF BEVERAGE (COCONUT DRINK)" in Class 35 under the Trade Mark Registration No: 09003866.

[15] At all material times the fresh Thai coconut beverages of the plaintiff have been supplied, distributed and sold in packaging bearing a distinctive label in substantially the form of the plaintiff's mark, the label being in the shape of a circle printed upon a yellow-coloured ground with a black-coloured border. The label has always comprised, as a prominent feature of the distinctive get-up and general layout thereof, the combination of an upwardly curved blue-coloured text scroll and a coconut device in the centre of the label bearing the red-coloured initials "WB".

[16] The plaintiff's mark is also registered in Singapore with the Singapore Trade Marks Registry in Class 32 under the Trade Mark Registration No: T0817286G.

[17] The registration of the plaintiff's mark in Singapore is and was at all material times valid and subsisting.

[18] By reason of the said registration of the plaintiff's mark, the plaintiff had exclusive rights to use the plaintiff's mark for goods covered by the trade mark registration in Malaysia and Singapore, namely fresh Thai coconut beverages.

Reputation And Goodwill In The Plaintiff's Mark

[19] The plaintiff has continuously used the plaintiff's mark in the course of its trade in Malaysia for many years and continues to do so to date.

[20] The plaintiff has achieved millions of Ringgit Malaysia (RM) in revenue from the sale of its fresh Thai coconut beverages bearing the plaintiff's mark. In this regard:

(a) For the financial year ending 31 August 2011, the plaintiff's revenue from the sales of fresh Thai coconut beverages was RM5,753,451;

(b) For the financial year ending 31 August 2010, the plaintiff's revenue from the sales of fresh Thai coconut beverages was RM6,288,752; and

(c) For the financial year ending 31 August 2009, the plaintiff's revenue from the sales of fresh Thai coconut beverages was RM5,921,546.

(d) The plaintiff has invested heavily in the marketing and promotion of products bearing the plaintiff's mark. The plaintiff also promotes its range of fresh Thai coconut beverages in their advertisements which are made available or accessible to the plaintiff's customers and/or members of the general public in Malaysia.

(e) By reason of the matters aforesaid, the plaintiff has acquired substantial reputation and considerable goodwill in the plaintiff's mark in Malaysia, and the plaintiff's mark is distinctive of the plaintiff and no other when used in relation to a wide range of fresh Thai coconut beverages sold in Malaysia.

Defendants' Act Of Infringement Of The Registered Trademark. Passing Off And/Or Unlawful Interference With The Plaintiff's Trade

[21] Since August 2012 and/or a date or dates which the plaintiff cannot specify until after discovery, the defendants, without the authority or consent of the plaintiff, have unlawfully distributed and/or sold and/or offered for sale to the trade and public in Malaysia fresh Thai coconut beverages not of the plaintiff's supply or supplied under their license which bear the plaintiff's mark or trade marks that are identical with the plaintiff's mark or so nearly

resemble the plaintiff's mark as are likely to deceive or cause confusion that the said products are the products of the plaintiff or they are supplied and distributed with the plaintiff's license or are otherwise endorsed by the plaintiff.

[22] The infringing products distributed and/or sold and/or offered for sale by the defendants as aforesaid bear a trade mark or label or get-up which is identical with the plaintiff's mark or nearly resembles the plaintiff's mark in respect of the same goods where the use is likely to deceive or cause confusion ("the infringing mark"). In this regard:

(a) The infringing products supplied, distributed and sold by the defendants are in packaging bearing a mark or label being in the shape of a circle printed upon a yellow-coloured ground with a black-coloured border. The label comprises the combination of an upwardly curved blue-coloured text scroll and a coconut device in the centre of the label bearing the red-coloured initials "BW".

(b) As a result thereof, the plaintiff has suffered damage and is calculated to suffer further damage unless the defendants' acts of infringement of trade mark herein complained are restrained.

The Defendants Have Raised Two Main Defences In Opposing The Application Made By The Plaintiff

Failure To Make Full Disclosure

[23] The plaintiff has completely and utterly failed to disclose to this Honourable Court that the plaintiff had used a different mark or different marks prior to the registration of the plaintiff's mark in 2009. See exh. B in the defendants' affidavit in reply in encl. 6. There is clearly a material non-disclosure pertaining to the plaintiffs mark which the defendant submits is certainly not irrelevant or immaterial but is the actual crux of the issue in this entire case. In an application for an injunction, full and frank disclosure is a statutory requirement and the failure to disclose is fatal (see *Papparoti (M) Sdn Bhd v. Roti-Roti International Sdn Bhd & Ors* [2009] 1 LNS 683; [2009] 5 AMR 326).

[24] The defendants further submit that the second material non-disclosure by the plaintiff is much more serious and is bordering on dishonesty, deception and willful or deliberate suppression of

material facts. The plaintiff must have known that the plaintiff's stickers on the plaintiff's coconut products are in exh. C in encl. 6 are different from what was exhibited in exhs. OCL5, OCL6, OCL8 and OCL11 in their application in encl. 5, yet the plaintiff willfully and deliberately did not inform this honourable court regarding this matter.

[25] In fact, OCL11 was a deliberate attempt by the plaintiff to lead this honourable court to believe that there were similarities in the plaintiff's products as compared to the defendants' products. Exhibit OCL11 at the top shows a clear picture of the plaintiff's products with their alleged mark. However, the bottom picture shows a blurred picture of the defendants' products with the defendants' mark. Now, the problem here is that the plaintiff's products in the market actually carry a different sticker or mark than what was shown on OCL11.

[26] The defendants have shown very conclusive proof of purchase of the plaintiff's actual coconut(s) from a restaurant/coffee shop known as Foodtiam Coffee, Seremban 2 on 19 November 2012, which shows a different sticker or mark on the coconut with the purchase receipt marked as "exh. C" in the defendant's affidavit in reply (encl. 6). Exhibit C is the actual picture of the plaintiff's sticker or mark on all their products in Malaysia, whereas exh. OCL11 (top picture) is actually a fabricated picture of the alleged sticker or mark on the plaintiff's products. This fabrication must have been deliberate and willfull on the plaintiff's part to try and hoodwink this Honourable Court to believe that there were such close similarities between both parties' products.

[27] In reality, this Honourable Court should be comparing the plaintiff's products in exh. C (defendant's affidavit in reply) with the defendants' products (bottom part of exh. OCL11) or the plaintiff's sticker as compared to the defendants' sticker (both shown in exh. D – The defendant's affidavit in reply) which clearly shows a marked and clearly discernible difference.

[28] The defendants also rely on the case of *Jothi Impex Sdn Bhd & Anor v. Yashree Store Sdn Bhd* [2009] 9 CLJ 785, where this court (the Johor Bahru High Court) held that:

> It is fundamental that the party applying for an injunction should have the utmost good faith in making the application and the doctrine of *uberrime fide* in effect applies. The duty to make full

A disclosure required the plaintiffs to make sufficient enquiries before making the application. This principle that no injunction obtained *ex parte* should stand if it had been obtained in circumstances in which there was breach of the duty to make the fullest and frankest disclosure.

B **[29]** The plaintiff's failure to be completely honest in its application and worse still, the willful and deliberate suppression of material facts perpetrated by the plaintiff shows that they had come to court with unclean hands and therefore, this Honourable Court should dismiss the plaintiff's application for injunction and C order costs to be paid forthwith by the plaintiff to the defendants.

Other Grounds

[30] The defendants submit that exh. OCL5 itself, pertaining to D the registration of the plaintiff's mark with the Intellectual Property Corporation of Malaysia, specifically states that the registration does not give the plaintiff the right to the exclusive use of the words "Fresh Coconut Thailand", the device of the "Coconut" and the letters "WB".

E **[31]** The plaintiff can't possibly complain about the defendant's name "BW Thai Coconut Enterprise" when the words 'BW', 'Thai' and 'Coconut' do not exclusively belong to the plaintiff. Further, the fact that the Companies Commission of Malaysia has allowed registration of the second defendant's sole proprietorship F "BW Thai Coconut Enterprise" shows that there is nothing identical, similar or likely to deceive or cause confusion as compared to the plaintiff, WB Fresh Coconut Supplier Sdn Bhd.

[32] As for the defendants' mark, there are various noticeable and G notable differences to differentiate itself from the plaintiff's mark:

a) The first noticeable and notable difference is the wording whereby the plaintiff's mark reads "Fresh Coconut Thailand" whereas the defendants' mark reads "BW Thai Coconut". H These are clearly very different words, where the only identical similarity is the word "Coconut" and the only similar word is "Thai" as compared to "Thailand". In either case, exh. OCL5 clearly and specifically states that these words are not the exclusive right of the plaintiff despite their registration of their I mark.

b) The second noticeable and notable difference is the picture in the center of the marks, whereby the plaintiff's mark shows a cartoonish picture of a complete coconut in bright green colour with the stalk and the words "WB" in bright red large font lettering. The defendants' mark on the other hand, shows an actual picture of a shaved or naked coconut (without any stalk) in its natural light brown colour with the words "BW" in dull red coloured small cursive font with a white perimeter outline. The bright green coloured coconut in the plaintiff's mark is very apparent and comes out visibly whereas the defendants' mark below does not have such similar feature and is an actual picture of a naked or shaved coconut in beige or light brown.

c) The third noticeable and notable difference is that the defendants' mark clearly carries a mobile telephone number at the bottom part of the mark reading "013-7708118" in red coloured font whereas the plaintiff's mark does not contain any telephone number at all and is completely blank at the bottom part of their mark.

[33] The defendants' mark is certainly not identical nor is it similar or so nearly resembling the plaintiff's mark. There is no intention by the defendant to deceive or mislead the trade and public into believing that the defendant's products are those of the plaintiff or originated or are closely associated or connected to the plaintiff as alleged. The purchasers of the defendants' products are able to and can actually differentiate between the defendants' products as compared to the plaintiff's products and *vice versa*.

Conclusion

[34] The defendants' mark or label or get-up is certainly not identical to the plaintiffs mark and there are various noticeable and notable differences to differentiate itself from the plaintiff's mark. Accordingly, the defendants deny any act of infringement of trade mark as alleged or any passing off or attempt to pass off the products as being that of the plaintiffs as alleged.

[35] The defendants submit that it is not in the interest of justice to grant the interlocutory injunction based on the plaintiff's allegations, especially taking into account the plaintiff's failure to make full and frank disclosure and deliberate and willful attempt to suppress material facts with the intention to mislead this Honourable Court.

[36] Furthermore, the defendants would suffer great injustice and would be jeopardised by the granting of the injunctive relief sought by the plaintiff.

[37] There were insufficient merits to support the injunctive relief sought and therefore, it is only proper and just for the plaintiff's application to be dismissed with costs and the defendants pray as such.

The Plaintiff's Submission

Non-Disclosure Of Material Fact:

[38] On the issue that the plaintiff failed to disclose the fact that it was using a different mark as shown in exh. B in the defendant's affidavit in reply (encl. 6), the plaintiff admitted that particular mark had been abandoned and was no longer used by the plaintiff after 2007 and therefore was immaterial and irrelevant.

[39] The plaintiff denies that it willfully and deliberately did not inform the court that the plaintiff's stickers as shown in exh. C of the defendant's affidavit in reply (encl. 6) are different from the marks exhibited in OCL5, OCL6 and OCL8 in encl. 5. The plaintiff had pointed out in actual fact there is no difference between the two. In fact the mark in exh. C bears all the same basic features of the mark in exh. OCL5, OCL6 and OLC8. The only difference is that exh. C also contains additional information about the importer, and the particulars of the product.

On The Issue Of Similarities Between The Plaintiff's Mark And That Of The Defendants

[40] The plaintiff submits that the mark used by the defendants on their products was identical or so nearly resembles the registered trade mark of the plaintiff as was likely to deceive or cause confusion in the course of trade in relation to the products of which the plaintiff's trade mark was registered. The plaintiff cited the case of *Wembley Gypsum Products Sdn Bhd v. MST Industrial Systems Sdn Bhd* [2007] 6 CLJ 228.

[41] The plaintiff further alleged that the defendants had been passing off the defendants' goods as that of the plaintiff's. The plaintiff had exhibited several statutory declarations, that is, OCL12, OCL13, OCL16-19 showing that the members of the

public were confused that the goods offered by the defendants were the goods of the plaintiff. The plaintiff relied on the following cases: See *Seet Chuan Seng & Anor v. Tee Yih Jia Food Manufacturing Pte Ltd* [1994] 3 CLJ 7 and *Sinma Medical Products (M) Sdn Bhd v. Yomeishu Seizo Co Ltd & Ors* [2004] 3 CLJ 815; [2004] 4 MLJ 358.

[42] The plaintiff submits that in deciding whether the defendant's usage of the trademarks on their products was deceptively similar to the plaintiffs trademark, it is the duty of the court to identify the essential and distinguishing feature of the whole trademark to see if the alleged offender had used one or more of its essential features. These essential features are not just pictures but also words and sound: See *Kuang Pei San Food Products Public Company Ltd v. Wees Marketing Co Sdn Bhd* [2012] 2 CLJ 906.

[43] The plaintiff also urged the court to adopt the 'imperfect recollection test' established in *Sandown Ltd's Application* [1914] 31 RPC 196 cited in *Kuang Pei San Food Products Public Co Ltd*'s case in deciding whether a consumer who sees the proposed trademark in the absence of the other trademark would be liable to be deceived and to think that the trademark before him is the same as the other of which he has a general recollection.

[44] The plaintiff submits that applying the imperfect recollection test, any consumer who sees the defendant's trademarks in the absence of the plaintiff's trademark of which he has a general recollection would probably be deceived to think that the trademark before him is the same as the plaintiff's trademark.

Rulings By The Court

On The Issue Of Making Full Disclosure

[45] Having considered the submissions by both the parties, I find that the defendants' submission on this issue is without merits.

[46] Firstly, I agree with the submission of the plaintiff that the trademark in exh. B in encl. 6 is an old trademark which the plaintiff has abandoned in 2007. I find that such information on the abandonment of the old trademark is not material and therefore the non-disclosure of such information will not in any way jeopardise the plaintiff's case.

[47] On the alleged second material non disclosure that the plaintiff must have known that its stickers on the plaintiff's coconut products as shown in exh. C in encl. 6 are different from what was shown in exh. OCL5, OCL6, OCL8 and OCL11, in encl. 5, I find that such an allegation is also without merits. I have compared the plaintiff's stickers as shown in exh. C in encl. 6 with those exhibited as OCL5, OCL6, OCL8 and OCL11 in encl. 5. I find that they bear the same basic features except that the plaintiff's stickers in exh. C in encl. 6 contained additional information about the importer and the particulars of the product.

[48] Secondly, as regards the registered trademark as exhibited in exh. OCL5 encl. 5, I agree that the registration of this trademark shall give no right to the exclusive use of the words "Fresh Coconut Thailand" the device of "coconut" and the letters "WB" except as shown in the representation on the form of application.

[49] I further agree that when one looks at the two trademarks side by side that is, the registered trademarks of the plaintiff and that used by the defendants as shown in exh. D in encl. 6, there are various noticeable and notable differences between the two trademarks as stated pointed in the defendant's submission above.

[50] However, what the court is concerned with is not the notable differences between the two trademarks when they are put side by side, but whether the basic features, of the two trademarks namely the shape of the label being a circle printed upon a yellow coloured backdrop, with a black coloured border the combination of an upwardly curved blue coloured text scroll and a "coconut" device in the centre of the label bearing the red colour initials "BW" would confuse members of the public. When I compared the two trademarks carefully, I find that the similar shape of the two trademarks with the pictorial device of "coconut" and the letters "BW" or "WB" in red at the centre with its same yellow backdrop and the upwardly curved blue coloured text scroll, that is, "BW Thai Coconut" and "Fresh Coconut Thailand" at the top of the label would probably confuse a consumer in general.

[51] Applying the imperfect recollection test established in *Sandown Ltd's Application*, I am convinced that a person who sees the defendants' trademark in the absence of the plaintiff's registered trademark of which he has a general recollection, would probably be deceived and think that the defendants' trademark before him is the same as the plaintiff's registered trademark.

[52] I also find that the plaintiff had also adduced evidence through various statutory declarations that is, OCL12, OCL13, OCL16-19 in encl. 5 showing that the defendants had been passing off their goods with the said trade mark as that of the plaintiff's goods.

[53] I therefore find that the defendants by their action has caused misrepresentation to the consumers and the plaintiff is likely to suffer damage or injury by reason of such action.

[54] I find that the balance of convenience is in favour of the plaintiff that if the injunction was not granted, the plaintiff would suffer greater injustice.

[55] For the above reasons, I granted order in terms of prayers 1, 2 and 3 and the undertakings by the plaintiff as stated in paras. 1, 3 and 4 in sch. 1 of encl. 4 and cost to be cost in the cause.